

U.S. Serial No. 10/022,049

Response to the Office Action of February 27, 2006

### REMARKS

Claims 1-4, 6-19, and 21-32 are pending and at issue in the above identified patent application. Of the claims at issue, claims 1, 16, and 32 are independent. In view of the foregoing amendments and the following remarks, reconsideration of the application is respectfully requested.

### Claim Objection

Claim 26 has been amended to correct the noted typographical error. The foregoing amendment should eliminate any objection to the claim.

### The Rejection under 35 U.S.C. § 101

Turning to the 35 U.S.C. § 101 rejection, the examiner rejected claim 31 as allegedly claiming non-statutory subject matter. The applicants respectfully traverse this rejection.

Claim 31 recites a computer-readable medium carrying one or more sequences of one or more instructions which, when executed, cause a processor to perform in a particular manner. Thus, claim 31 falls within the well established class of statutory subject matter discussed by the Federal Circuit in In re Beauregard, 35 U.S.P.Q.2d 1383 (Fed. Cir. 1995). In that case, the Federal Circuit stated, "The Commissioner now states 'that computer programs embodied in a tangible medium, such as floppy diskettes, are patentable subject matter under 35 U.S.C. § 101...'” Id. at 1384. This precedential case law has been followed by the USPTO to date. As explained in the MPEP:

*a claimed computer-readable medium encoded with a computer program* is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and *is thus statutory*.

(MPEP § 2106 IV(B)(1)(a); emphasis added). Claim 31 is directed toward a claimed computer-readable medium with computer instructions encoded thereon and is, thus,

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statutory as provided by the Federal Circuit and the MPEP. Accordingly, the 35 U.S.C. § 101 rejection is in error and must be withdrawn.

**The Rejections under 35 U.S.C. § 102**

Each of independent claims 1, 16, and 32 have been rejected as anticipated by either Tsukidate (US 6,507,950) or Bhatt (US 2002/0073426) as described in the action. The applicants have amended each of the independent claims as noted below, and accordingly, the rejections under 35 U.S.C. § 102 should be withdrawn.

**The Rejections under 35 U.S.C. § 103**

Claims 1 and 16 have been amended to include all of the limitation of claims 5 and 20, respectively. Claim 32 has been amended to include the limitations of claim 5. Additionally, each of claims 1, 16, and 32 have been amended to clarify that the temporal sorting is based upon a current time.

Claims 5 and 20 were rejected as being unpatentable over Tsukidate (US 6,507,950) in view Bhatt (US 2002/0073426). It is respectfully submitted that claims 1, 16, and 32 as amended are allowable over these patents for the reasons set forth below.

Independent claims 1, 16, and 32 are generally directed to a system and/or method of organizing electronic program guide data based upon time based event horizons. In particular, claims 1 and 32 now recite, *inter alia*, a system for organizing data wherein a processor directs that the data be temporally sorted based upon a current time into data that is most likely to be immediately accessed for an application, and data that is most likely to be accessed in the more distant future, the data that is most likely to be immediately accessed being stored in the physical memory, the data that is most likely to be accessed in the more distant future being stored in the mass storage device. Similarly, claim 16 now recites, *inter alia*, a method for organizing data, wherein a processor controls the storage and manipulation of the data between the physical memory and the mass storage device so that the data is

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temporally sorted based upon a current time into data that is most likely to be immediately accessed for an application, and data that is most likely to be accessed in the more distant future, the data that is most likely to be immediately accessed being stored in the physical memory, the data that is most likely to be accessed in the more distant future being stored in the mass storage device.

As noted, claims 5 and 20 were rejected as obvious over Tsukidate in view Bhatt. However, neither Tsukidate nor Bhatt, either alone or in combination, describes or suggests temporally sorting data such that the data that is most likely to be immediately accessed is stored in physical memory, while the data that is most likely to be accessed in the more distant future is stored in a mass storage device.

In contrast, Tsukidate is directed to a program information broadcasting system wherein program elements are divided into master data and program basic information. From the data constituting the master data, minimal necessary items for preparation of a program table are extracted. Tsukidate does not describe or suggest that the data is temporally sorted into data that is most likely to be accessed. This deficiency is admitted by the examiner (Office action; page 7).

In an attempt to cure the noted deficiency of Tsukidate, the examiner relies upon Bhatt. Bhatt, however, similarly fails to describe or suggest temporal sorting of data such that the data that is most likely to be immediately accessed is stored in physical memory, while the data that is most likely to be accessed in the more distant future is stored in a mass storage device.

Rather, Bhatt is directed to the sorting or preferred portions of a program guide based upon user preferences, not on temporal sorting based upon a current time. In particular, Bhatt first notes that in a traditional method of storing all electronic program guide information in a single memory (i.e., DRAM), program information, channel information, and schedule

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information are typically stored for up to 14 days. (FIG. 2; page 2, para. 29). To solve the problem of having a single, large memory requirement associated with traditional systems, Bhatt describes a selection algorithm to select and maintain the contents of the EPG in separate memory components, i.e., DRAM and a Hard Disk based upon defined user preferences. (FIG. 3; page 2, para. 11).

Specifically, in Bhatt, program guide information is downloaded daily and initially stored in a hard drive. A selection algorithm then "searches the downloaded EPG for a match with programs, channels and schedules preferred by the individual user." (Page 3, para. 31). In particular, preferred programming is determined from information entered by the user, such as "the five most frequently viewed channels, the five most viewed programs, the five most viewed program types, and the five most viewed time slots." (Page 3, para. 32.). In other words, Bhatt does not describe temporal sorting based upon a current time, but rather specifically describes the selection of data based upon a user profile, created and maintained within the algorithm. Any time based selection in Bhatt (i.e. five most viewed time slots) is determined based upon a user preference, and not upon a current time. Accordingly, Bhatt can not cure the noted deficiency of Tsukidate.

Therefore, due to the deficiencies in both Tsukidate and Bhatt, it follows that no combination of Tsukidate and Bhatt can render obvious amended claims 1, 16, 32, or any claims dependent thereon. In particular, because neither Tsukidate nor Bhatt discloses temporally sorted into data that is most likely to be immediately accessed for an application, and data that is most likely to be accessed in the more distant future, no combination of Tsukidate and Bhatt can result in a system in which the data that is most likely to be immediately accessed being stored in the physical memory, the data that is most likely to be accessed in the more distant future being stored in the mass storage device. Accordingly, it is

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respectfully submitted that claims 1, 16, 32, and all claims dependent thereon are in condition for allowance.

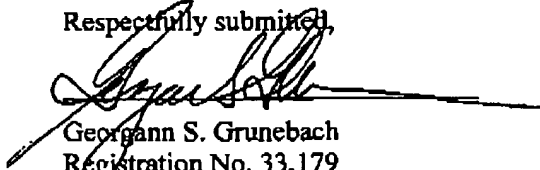
**Double Patenting**

Claims 1, 16, and 31/16 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting. The above-amendments to claims 1 and 16 should obviate the noted rejection, and accordingly, the applicants respectfully request the withdrawal of any rejection that may have been proper.

**Conclusion**

Reconsideration of the application and allowance thereof are respectfully requested. If there is any matter that the examiner would like to discuss, the examiner is invited to contact the undersigned representative at the telephone number set forth below.

Respectfully submitted,



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